

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Denial of the
Application of Ronald Smith and Debra
Longe to Provide Family Child Care

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a hearing before Administrative Law Judge Barbara L. Neilson on November 20, 2003, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. David F. MacMillan, Assistant County Attorney, Office of the Ramsey County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, Minnesota 55102-1556, appeared on behalf of the Department of Human Services ("the Department") and the Ramsey County Community Human Services Department ("RCCHSD"). There was no appearance by or on behalf of the Applicants, Ronald Smith and Debra Longe, 1522 DeSoto Avenue, St. Paul, Minnesota 55101. The record closed at the conclusion of the hearing on November 20, 2003.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of the Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155 (telephone no. (651) 296-2701), to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether the Commissioner's order denying the application of Ronald Smith and Debra Longe for a family child care license should be affirmed because a preponderance of the evidence indicates that Mr. Smith committed an act of burglary in 1994 and therefore has a disqualification under Minn. Stat. § 245C.14, subd. 1, that warrants denial of the license application.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Hearing in this matter was served upon the Applicants, Ronald Smith and Debra Longe, by first class mail at 1522 DeSoto Avenue, St. Paul, Minnesota 55101, on October 30, 2003.^[1]

2. The Notice of and Order for Hearing mailed to the Applicants included the following notice: "Failure to appear at the hearing or prehearing conference will result in the allegations of the Notice of and Order for Hearing, including the incorporated order, being taken as true. This means that the action being appealed will be upheld."

3. The Applicants did not file any Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. The Applicants did not appear at the hearing scheduled for November 20, 2003, or have an appearance made on their behalf. The Applicants also did not contact the Administrative Law Judge between November 20, 2003, and the date on which this Report was issued.

4. After the Applicants filed their application for a family child care license, the background checked revealed that, in January of 1991, Mr. Smith was arrested for domestic assault and violation of a restraining order, and, in September of 1994, he was arrested for burglary. The Ramsey County Community Human Services Department requested copies of police reports, which were thereafter reviewed by the Ramsey County Attorney's Office. With respect to the 1994 incident, Mr. Smith's ex-wife did not wish to pursue any charges and Mr. Smith was not prosecuted. After review, the Ramsey County Attorney's Office determined that a preponderance of the evidence supported a conclusion that Mr. Smith choked his former wife in the January 1991 incident, a misdemeanor domestic assault in the fifth degree under Minn. Stat. § 609.2242, and that he entered his former wife's residence without permission in September 1994, a burglary under Minn. Stat. § 609.582. It was further determined that the 1991 incident resulted in a ten-year disqualification period which has now expired, but the 1994 violation resulted in a ten-year disqualification period which does not expire until September 2004.^[2]

5. Because the Applicants failed to appear at the hearing in this matter, they are in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing and the documents attached to the Notice of and Order for Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based on the foregoing Findings of Fact, the Administrative Law Judge hereby makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Applicants were given proper notice of the hearing in this matter and all relevant substantive and procedural requirements of statutes and rules have been substantially fulfilled.

3. Under Minn. Stat. § 245A.05, the Commissioner may deny a license if an applicant fails to comply with applicable laws or rules.

4. Under Minn. Rules part 9502.0335, subp. 6(D), an applicant “shall not be issued a license . . . if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children . . . has a disqualification under Minnesota Statutes, section 245C.14.”

5. Under Minn. Stat. § 245C.14, subd. 1, the Commissioner of Human Services “shall disqualify an individual who is the subject of a background study from any position allowing direct contact with persons receiving services from the license holder . . . upon receipt of information showing, or when a background study completed under this chapter shows any of the following: . . . (2) a preponderance of the evidence indicates the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15” Minn. Stat. § 245C.15, subd. 3, specifies that an individual is disqualified under Minn. Stat. § 245C.14 for ten years for the offense of burglary in violation of Minn. Stat. § 609.582.

6. Under Minn. Rule 1400.6000, the Applicants are in default as a result of their failure to appear at the scheduled hearing.

7. Under Minn. Rule 1400.6000, when a party defaults, the allegations and the issues set out in the Notice of and Order for Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore takes the allegations and issues set forth in the Notice of and Order for Hearing and attached Exhibit A and Order for Revocation as true and deemed proved. Accordingly, the denial of the Applicants’ application for a family child care license is warranted.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

That the Commissioner's order denying the application of Ronald Smith and Debra Longe for a family child care license be AFFIRMED.

Dated: December 18, 2003

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded (one tape).

^[1] Affidavit of Service by First Class Mail of Barbara A. Johnson, attached to Notice of and Order for Hearing.

^[2] Ex. 1.